



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 09, 2023

IN THE MATTER OF:

Appeal Board No. 628469

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board No. 628469, the employer appeals from the decision of the Administrative Law Judge filed March 9, 2023, which overruled the initial determination disqualifying the claimant from receiving benefits, effective October 19, 2022, on the basis that the claimant voluntarily separated from employment without good cause.

In Appeal Board No. 628470, an appeal was processed from the decision of the Administrative Law Judge filed March 9, 2023, which sustained the initial determination holding the claimant ineligible to receive benefits, effective November 21, 2022, on the basis that the claimant was not available for employment, as modified to be effective November 21, 2022 until February 1, 2023.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

We have reviewed the entire record and have considered the testimony and other evidence.

With respect to Appeal Board No. 628470, it appears that the appeal was processed through inadvertence, as the employer's appeal letter does not encompass this case.

With respect to Appeal Board No. 628469, based on the record and testimony in

this case, the Board makes the following

FINDINGS OF FACT: The claimant worked full time for a year as an assistant teacher at a day care center. The claimant's mother was 76 years old and had cancer. The only people available to care for the claimant's mother were the claimant and her brother, who worked from 3:00 PM to 10:00 PM. The claimant's brother lived with their mother. The claimant lived in the building next door. Commuting from her job on Long Island to her home in Brooklyn, the claimant would get home close to 7:30 PM. The claimant's mother was alone from 2:00 PM to 8:00 PM.

The claimant's mother could feed herself and use the bathroom on her own. She needed help walking around and standing for long periods of time. The claimant was concerned that her mother would fall.

The claimant requested and was granted a change of schedule so that she would work four days per week from 8:00 AM to 4:30 PM and would work until 5:30 PM one day per week. Previously, she was scheduled to work until 6:00 each night. This schedule change did not resolve the claimant's desire for someone to be present with her mother throughout the day.

The claimant resigned effective October 28, 2022. No doctor advised the claimant or her mother that her mother needed someone at home to help her. The claimant did not request a leave of absence prior to quitting. Once the claimant was caring for her mother full time, the claimant assisted her mother with tasks including bathing, dressing, housekeeping, shopping, and meal preparation.

OPINION: The credible evidence establishes that the claimant quit her job to care for her mother. Although her mother was suffering from cancer and in need of some assistance with certain tasks, the record does not establish that the claimant's mother had reached the point of needing round-the-clock care. Significantly, the claimant testified that no doctor advised her or her mother that such extensive care was needed. The claimant also has not shown that the risk of her mother falling was so great as to require that the claimant stop working. Finally, the tasks that the claimant assisted her mother with after quitting her job were tasks that the claimant could have performed during her off hours. Under these circumstances, we do not find that the claimant had good cause to quit for purposes of the Unemployment Insurance Law (see *Matter of Kuhns*, 16 AD3d 816 [3d Dept 2005]; Appeal Board No. 486687). Accordingly,

we conclude that the claimant voluntarily quit her job without good cause, and the claimant is disqualified from benefits.

DECISION: In Appeal Board No. 628469, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 628470, the appeal is dismissed. The decision in A.L.J. Case No. 023-01897 is continued in effect.

In Appeal Board No. 628469, the initial determination, disqualifying the claimant from receiving benefits, effective October 19, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER